TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~221~~ 52

JOSIAH MORRIS, AGENT AND CLAIMANT FOR THE BANK OF LOUISIANA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

1 District Court of the United States for the middle district of the State of Alabama.

JOSIAH MORRIS, agent for and on behalf of the Bank of Louisiana, appellant,
vs.
UNITED STATES, appellee.

UNITED STATES OF AMERICA:

To the Supreme Court of the United States:

The petition of appeal of the above-named Bank of Louisiana, by its agent acting on its behalf, respectfully shows: That a decree was lately made in the District Court of the United States for the middle district of the State of Alabama, bearing date the 20th day of December, 1866, in a certain cause therein pending, wherein the United States was libellant and the above-named Josiah Morris, for and on behalf of the Bank of Louisiana, was claimant of one hundred and fifty-nine bales of cotton, in and by which said decree it was ordered, adjudged, and decreed, "that the said cotton be forfeited to the United States, and judgment for the value thereof, namely, twenty-five [five] thousand and sixty-nine dollars and seventy cents, together with costs, is hereby decreed against the stipulators and claimants, for which the United States shall have execution," which

2 said decree of said District Court is, as this appellant is advised, erroneous, and ought to be reversed; wherefore this appellant prays that the said decree may be reversed, and that such other decree may be made by this court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which it has lost by said decree; and this appellant will ever pray.

Dated this 7th day of December, 1867.

BANK OF LOUISIANA.
By JOSIAH MORRIS, *Agent, &c.*

A. MARTIN, *Proctor,*
W. P. CHILTON, *Advocate.*

3 UNITED STATES OF AMERICA, *Middle District of Alabama:*

At a District Court of the United States for the middle district of Alabama, begun and held at Montgomery on the fourth Monday of November, in the year of our Lord one thousand eight hundred and sixty-six, present the Honorable Richard Busteed, judge presiding, the following proceedings were had, to wit:

District Court of the United States of America for the middle district of Alabama.

Information.

To the judge of the District Court of the United States for the middle district of Alabama:

James Q. Smith, esquire, attorney of the United States for said district, who prosecutes for the United States, and an informer,

exhibits this information against a certain one hundred and fifty-nine (159) bales of cotton, now on the plantation of W. R. Pickett, in the district aforesaid, seized and now in custody of John Hardy, marshal of said district, under an order of seizure issued by the said attorney of the United States, on the fourth day of May, 1866, and against all persons lawfully intervening for their interest therein; and thereupon the said attorney doth allege, articulately propound, and give the said judge to understand that in and during the years 1862, 1863, 1864, and 1865, in the district aforesaid, on land, the said property was knowingly used and employed by the owners, and with the consent of the owners of said property, in aiding, abetting, and promoting an insurrection and rebellion against the government of the United States.

First. For that heretofore, to wit, in and during the years aforesaid, and after the proclamation of the President of the
4 United States referred to in the act of Congress. entitled "An act to confiscate property used for insurrectionary purposes," approved August the 6th, 1861, the property hereinbefore described was knowingly used and employed, in the district aforesaid, by the owners, and with the consent of the owners thereof, in aiding, abetting, and promoting insurrection or resistance to the laws and authority of the United States.

Second. For that heretofore, to wit, in and during the year aforesaid, in the district aforesaid, after the passage of the act aforesaid, and the publication of the proclamation aforesaid, the said property was knowingly used and employed by the owners, and with the consent of the owners thereof, in aiding, abetting, and promoting persons engaged in aiding, abetting, and promoting said rebellion and resistance to the laws and authority of the United States, in this: that in and during the years aforesaid said property was used with the knowledge and consent of the owners thereof, and sold to persons engaged in blockade running, as cotton sold to persons engaged in assisting the rebellion of the late so-called Confederate States, who paid therefor the currency and bonds of the said Confederate States, issued for rebellious purposes, as cotton sold for Confederate States' treasury notes to persons residing in the States or parts of States not in rebellion against the U. States at a time when all trade between persons residing in States not in rebellion, and parts of States not in rebellion, with persons residing within States in rebellion, or parts thereof, thereby aiding, abetting, and promoting said persons in their said rebellion and resistance to the laws and authority of the United States, contrary to the form of the statute of the United States in such case made and provided. The said attorney of the United States, on behalf the United States, saieth that all and singular the premises are true; wherefore he prays that process, in due form of law, may issue against the said
5 property, to enforce seizure, confiscation, and condemnation of the same as forfeited, and requiring notice to be given to

all persons concerned in interest to appear and show cause, on the return day of said process, why such property should not be decreed.

JAMES Q. SMITH,
United States District Attorney Middle Dist. Ala.

Filed M'y 4th, 1866.

E. C. V. BLAKE, *Clerk.*

District Court of the United States, middle district of Alabama.

Amended libel of information.

UNITED STATES OF AMERICA
vs.
159 BALES OF COTTON.

Amendment to the libel of information in this proceeding:

3rd. For that heretofore, that is to say after the passage of a certain act of Congress of the United States, entitled "An act further to provide for the collection of duties on imports and other purposes," approved July 13th, 1861, it is provided, among other things, that whenever the President, in pursuance of the second section of the act entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions, and to repeal the act now in force for that purpose," approved February 28th, 1795, shall have called forth the militia to suppress combinations against the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part thereof in which said combination exists, nor such insurrection suppressed by such State or any section or part thereof where such insurrection exists, or in a state of insurrection against the United States, and thereupon all commercial intercourse by and between the same and the citizens thereof, and [and] the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue, and all goods and chattels, wares, and merchandise coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: Provided, That the President may, in his discretion, license and permit commercial intercourse with such part of said State or sections, the inhabitants of which are so declared in insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on in pursuance of rules and regulations prescribed by the Secretary of the Treasury.

4th. For that heretofore, that is to say, after the passage of the act of Congress aforesaid, and the publication of the proclamation by the President of the United States therein mentioned, declaring that the inhabitants of the State of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida, except the inhabitants of a certain part Virginia, and of such other parts of Virginia and other States therein named as maintain a loyal adhesion to the Union and the Constitution, or may be from time to time occupied and controlled by the forces of the United engaged in the dispersion of said insurgents, that one George G. Staver, an inhabitant of the city of New Orleans, in the State of Louisiana, acting for himself and for other inhabitants of said city and State, whose names are now unknown, the said State being one of the States mentioned in said proclamation as in insurrection against the government of the United States, and the said city being at the time occupied
7 and controlled by the forces of the United States engaged in the dispersion of the insurgents, for the purpose and with the intent of engaging and carrying on commercial intercourse with the inhabitants of the State of Alabama, one of the States mentioned in said proclamation as in insurrection against the United States, the said Stever for himself and others, as aforesaid. crossed the lines of occupation of the United States army into the State of Alabama, and after so passing as aforesaid, with the intent aforesaid, did engage in and carry on commercial intercourse with an inhabitant of said State of Alabama, in this: that the said Stever, as aforesaid, purchased one hundred and fifty-nine (159) bales of cotton from one Wm. R. Pickett, an inhabitant of the said State of Alabama, the said cotton having been purchased and sold in the district aforesaid and within the jurisdiction of said court, and being the district in which said cotton was first found; that the said Pickett sold said cotton to the said Stever, as aforesaid, neither of whom had a license and permit from the President of the United States, conducted and to be carried on in pursuance of rules and regulations prescribed by the Secretary of the Treasury, whereby and by reason of the violation of said act and the proclamations issued thereunder by the said Stever, an inhabitant of the city of New Orleans, at the time occupied and controlled by the forces of the United States, and the said Pickett, an inhabitant of the State of Alabama, then in insurrection against the United States, the said one hundred and fifty nine bales of cotton became liable to seizure and forfeited to the United States.

5th. For that heretofore, that is to say, after the passage of a certain other act of the Congress of the United States, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels and for other purposes," approved
17 July, 1862, one William R. Pickett, being engaged in armed
8 rebellion against the United States, and engaged in aiding and abetting such rebellion, did not within 60 days of public warning and proclamation during given and made by the President of the

United States, cease to aid, countenance, and abet the rebellion then existing and being carried on against the government of the United States, and return to his allegiance to the United States, whereby all the estate and property, monies, stock, credits, and effects of the said Pickett became and were liable to seizure and condemnation; and the said Pickett being the owner of one hundred and fifty-nine bales of cotton seized in this case, the said one hundred nine bales of cotton became and were liable to seizure, condemnation and sale as enemies' property, and became the property of the United States—the said property being found in the district aforesaid and within the jurisdiction of this court.

JAMES Q. SMITH,
U. S. Dis't Att'y.

Amended by inserting that said 159 bales of cotton were sold by William Knox to the agent of the Bank of Louisiana.

Filed this 12th day of November, '66.

E. C. V. BLAKE, *Clerk.*

Monition and return.—Warrant of arrest.

The President of the United States of America to the marshal of the middle district of Alabama, greeting:

Whereas, an information hath been filed in the District Court of the United States for the middle district of Alabama, on the 4th day of May, in the year 1866, by James Q. Smith, esquire, attorney of the United States for said district on behalf of the United
9 States of America, and an informer, against one hundred and fifty-nine bales of cotton in the district aforesaid, on the plantation of W. R. Pickett, for reasons and causes in said information mentioned, and praying the usual process and monition of the court in that behalf to be made, and that all persons interested in said property may be cited in general and special to answer the premises, and all due proceedings being had that the said property mentioned be condemned, and the proceeds distributed according to law, you are therefore hereby commanded to attach the said property, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of said information, that they be and appear before the said court, to be held in and for said district, on the fourth in May next, at 10 o'clock in the forenoon of that day, if the same should be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make these allegations in that behalf, and what you shall have done in the premises do you then and there make return thereof with this writ.

Witness the Honorable Richard Busteed, judge of the said court, in the middle district of Alabama, the fourth Monday in November,

in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth year.

[SEAL] E. C. V. BLAKE, *Clerk.*

Issued May 4th, 1866.

E. C. V. BLAKE, *Clerk.*

10 *Marshal's return.*

Came to hand May 8, 1866; and in obedience to the within warrant, I have arrested one hundred and fifty-four (154) bales of cotton being the same mentioned in the within warrant, and I have notified all persons having, or claiming to have, any right, title, or interest therein, to appear at the next term of said court, and show cause why said cotton should not be condemned, as I am commanded to do.

May 11, 1866.

JOHN HARDY, *Marshal.*
By JOHN DAVIS, *Dep'ty Marshal.*

Bond.

Know all men by these presents that we, Josiah Morris and William H. Smith and William C. Ray are held and firmly bound unto the United States of America in the sum of forty-six thousand two hundred dollars, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 13th day of June, 1866.

Whereas an information has been filed in the District Court of the United States against one hundred and fifty-four bales of cotton, for reasons and causes in said information mentioned; and whereas the said 154 bales of cotton are in the custody of the marshal of said district, under the process issued in pursuance of the prayer of said information; and whereas the value of said 154 bales of cotton has been agreed upon as twenty-three thousand one hundred dollars:

Now, therefore, the condition of this obligation is such, that in case the said 154 bales of cotton aforesaid shall be condemned as forfeited goods, if the said Josiah Morris or William H. Smith or William C. Ray, or either of them, or the heirs, executors or administrators of either of them, shall thereupon pay into said court the sum of twenty-three [three] thousand one hundred dollars, then this
11 obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] JOSIAH MORRIS.
[SEAL.] WM. H. SMITH.
[SEAL.] WILLIAM C. RAY.

U. S. OF AMERICA, *Mid. Dis. Alabama.*

Before me, E. C. V. Blake, clerk District Court, personally appeared William C. Ray, who, being duly sworn, deposeth and says

that he is worth over and above all just debts, liabilities, and judgments the sum of fifty thousand dollars.

WILLIAM C. RAY.

Sworn to and subscribed before me this the 13th day of June, 1866.

E. C. V. BLAKE,
Cl'k Dist Court.

U. S. OF AMERICA, *Mid. Dist, Alabama*:

Before me, E. C. V. Blake, clerk District Court, personally appeared William N. Smith, who, being duly sworn, deposeth and says that he is worth over and above all just debts, liabilities, and judgments the sum of twenty thousand dollars.

WILLIAM H. SMITH.

Sworn and subscribed before me this the 13th day of June, 1866.

E. C. V. BLAKE,
Clerk Dist. Ct.

Filed June 13, '66.

E. C. V. BLAKE, *Cl'k.*

District Court of U. States for middle district of Alabama.

Claim Bond of Morris.

UNITED STATES OF AMERICA:

Know all men by these presents that Josiah Morris, William C. Ray, and William H. Smith are held and firmly bound to the United States of America in the sum of two hundred dollars lawful money of the said United States, to be paid to the said United States, for the payment of which well and truly we bind ourselves, and each
12 of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 9th day of June, in the year of our Lord 1866.

Whereas an information has been filed in the District Court of the United States of America for the middle district of Alabama, on the —— day of ——, in the year of Lord 1866, by J. Q. Smith, esq., attorney of the said United States for the district aforesaid, against 159 bales of cotton, seized for reasons and causes in the said information mentioned, and praying that the same may be condemned as forfeited; and whereas also a claim has been filed in the said court by the ——, Josiah Morris, as bailee of 155 bales of said 159 bales of cotton: Now, therefore, the condition of this obligation is such, that in case the said Josiah Morris shall not support his said claim, if the said Josiah Morris and William C. Ray, William H. Smith, or either of them, or the heirs, administrators, or executors of the said Josiah Morris and William C. Ray, William H. Smith, or either of them, shall pay all such costs as by reason of his failure to support

his said claim he ought to pay, then this obligation to be void; otherwise to remain in full force and virtue.

[L. S.] JOSIAH MORRIS.
[L. S.] WILLIAM C. RAY.
[L. S.] WM. H. SMITH.

Filed June 9th, 1866.

E. C. V. BLAKE, *Clk.*

13 District Court of the United States for the middle district of Alabama.—Spring Term, 1866.

UNITED STATES
vs.
159 BALES OF COTTON.

Comes Josiah Morris, by Chilton and Rice, his proctors, and makes his claim, answer, pleas, and exceptive allegations to the information filed in this case by J. Q. Smith, esq., the district attorney for said district, against 159 bales of cotton now on the plantation of W. R. Picket, the said information being exhibited on behalf of the United States and an informer. And the said Josiah Morris doth allege and propound as follows, to wit: First. That he, the said Josiah Morris, is the true and bona fide bailee of 155 bales of said cotton, in virtue of certain legal proceedings had and now pending in the Circuit Court of Montgomery county, wherein Edward H. Wilson is plaintiff, and the Bank of Louisiana, a corporation created by, and organized under, an act of the Legislature of the State of Louisiana, and located at the city of New Orleans, is defendant, the said suit having been commenced by attachment issued on the 10th day of July, 1865, and said cotton was levied upon in virtue of said attachment on the 11 day of July, 1865, and the same was taken into the custody of the said Circuit Court in virtue of said process and levy; and afterwards, to wit, on the —— ——, 1865, the said cotton was ordered to be sold by the said Circuit Court; but the said Circuit Court by a subsequent order permitted and authorized the said cotton to be replevied, and thereupon the said Josiah Morris; on the 9th day of January, 1866, as by the laws of the State of Alabama he had a right to do, replevied said cotton, with other cotton levied upon under said process, and executed of said date his re-
14 plevy bond in the sum of one hundred and eighty-six thousand eight hundred and twenty-five dollars, payable unto the said Edward H. Wilson upon condition that if the defendant in the action and the said Josiah Morris, or his sureties, will return the said cotton attached as aforesaid within thirty days after judgment, the [the] said bond to be void; and the said Morris gave on the said bond W. C. Ray, A. F. Given, E. H. Metcalf, and D. Browder, as his securities, which said bond was duly approved and filed in said court, and is now in full force and effect in law; all of which will fully appear by reference to the proceedings of said Circuit Court in Montgomery county, a copy of which, together with the replevy bond aforesaid, is

hereto attached marked exhibit "A," and prayed to be taken as a part hereof; and so the said Josiah Morris avers that he is a true and bona fide bailee of the said cotton for the parties litigant in said suit, and that no person other than said parties whose claim he represents as bailee aforesaid, have any interest in said cotton; and this claimant proceeding to answer the several allegations in said information contained, doth thereupon allege and propound as follows, to wit: that it is not true as stated in the first article of said information, that during the years 1861, 1862, 1863, 1864, and 1865, or during either of those years, and after the proclamation of the President of the United States, referred to in the act of Congress, entitled an act ["An act] to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the property hereinabove described was knowingly used and employed in the district aforesaid, or elsewhere by the owners, or with the consent of the owners thereof, in aiding, abetting, or promoting any insurrection or resistance to the laws and authority of the United States.

15 Second. The said claimant, further answering, alleges and propounds that it is not true as stated in the second article of said information that during the years aforesaid, in the district aforesaid, or other place whatever, after the passage of the act aforesaid, and the publication of the proclamation aforesaid, or at any other time said property was knowingly used or employed by the owners, or with the consent of the owners thereof, in aiding, abetting or promoting persons engaged in aiding, abetting, or promoting any rebellion, or resistance to the laws or authority of the United States. Another claimant denies that the said cotton was ever sold to the so-called Confederate States, or that the same or any part thereof was set apart, or in any wise designated as cotton subscribed to the so-called "Confederate States cotton produce loan;" and he denies that the late so-called Confederate States ever had any right, title, or interest in said cotton as such; said claimant denies that said cotton was sold to persons engaged in blockade running, or that it was sold for that purpose. Claimant denies that the said cotton was sold to persons engaged in aiding and assisting the rebellion of the late so-called Confederate States, who paid therefor the currency and bonds of the said Confederate States issued for rebellious purposes. The said claimant admits that said cotton was purchased with Confederate States treasury notes, but denies that it was sold to persons residing in States, or parts of States, not in rebellion against the United States at a time when all trade between persons residing in States not in rebellion, and parts of States not in rebellion, with persons residing within States in rebellion or parts thereof, was prohibited or unlawful.

On the contrary, said claimant avers that the said cotton was
16 purchased by said Bank of Louisiana, then being a corporation located in the city of New Orleans, State of Louisiana, duly chartered by, and organized under, a law of said State, and the said cotton was then and there delivered to the agent of the said bank, and by him kept until the same was levied on in virtue of the attachment of Edward H. Wilson against the Bank of Louisiana herein

above set forth. And the said claimant further answers, that the said Bank of Louisiana had full and ample authority to bring the means which bought the said cotton into the State of Alabama, and to invest the same in the purchase of said cotton as aforesaid. This claimant denies that said cotton was purchased by said bank in violation or contravention of any commercial regulation of the United States, relating to commercial intercourse between persons residing within the lines of the United States and persons in rebellion or resistance to the laws of the United States; and said claimant denies that any use was made, or intended to be made, of said cotton, to aid or promote said insurrection or rebellion, or to abet or promote persons engaged in said insurrection or rebellion by the said bank, or any one else having control or ownership of the said cotton.

And for plea to that portion of said information as charges the selling the said cotton to persons residing in the federal lines during the rebellion, and at a time when all commercial intercourse between persons residing within the lines of the United States and persons in rebellion and resistance to the laws and authority of the United States, thereby aiding, abetting, and promoting said persons in their said rebellion and resistance to the laws and author-

17 ity of the United States, said claimant doth allege, propound, and plead, that the said selling of the said cotton is the sale made as hereinabove stated in this answer and set forth, and not another or indifferent sale; and the said claimant avers that the said Bank of Louisiana before and at the time of the purchase of said cotton, and still is a corporation created by, and organized under, an act of the Legislature of the State of Louisiana, passed on the 7th day of April, in the year of Lord 1824, and that the said claimant is ready to verify; wherefore said claimant, in behalf of said Bank, and all parties concerned or interested in said cotton, prays judgment of that portion of said information, and that the same be dismissed. And for further plea to the allegation of the said information in the plea not above set forth, the said claimant doth allege, propound, and plead that no forfeiture or condemnation of said cotton should be had or made by this court, because he says that the selling in the said allegation mentioned is the identical sale made of the said cotton to the Bank of Louisiana, as the same is alleged and propounded as hereinabove set forth in this answer; that the said bank then was, and from thence at, and until the present time has been, and is, an incorporated institution, duly and legally incorporated by the act of the Legislature of the State of Louisiana as aforesaid, and located and organized in the city of New Orleans, in the State of Louisiana as aforesaid; and said claimant avers that on the 11th day of September, A. D. 1862, at the city of New Orleans, the said city being then in possession of the military authorities of the United States, the same being in the command and under the jurisdiction of Major General Benjamin F. Butler, a Major General in the military service of the

United States of America, the said Major General B. F. But-

18 ler, so being in command, and having full authority to give a permit to the agent of said bank to pass through the military

lines of the United States then in command of said Butler, and intervening between said city of New Orleans and the city of Montgomery, in the State of Alabama, which was without the said military lines of the United States, did, on the 11th day of September, 1862, give to the said Bank of Louisiana the following permit to pass the said military lines of the United States, as follows, that is to say:

HEADQUARTERS DEPARTMENT OF THE GULF OF NEW ORLEANS,
Sept. 11, 1862.

Mr. George G. Steever, agent of the Bank of Louisiana, has safe conduct through my lines to carry with him a sealed package under the seal of the Bank of Louisiana, of whatever size it may be, bearing that seal, such package not to be searched or interferred with, and also to return through the lines with safe conduct, he reporting himself on his return, with whatever he may have on his return, to these headquarters. His personal baggage will be searched as usual.

(Signed) BENJAMIN F. BUTLER,
Major General Commanding.

And said claimant avers that the said permit was granted under a request made in obedience to a memoranda of the said Bank of Louisiana, adopted by the board of directors of said bank on the 8th day of September, 1862, that portion of the memoranda referring to and asking for such permit being in the following words: "That General Butler give permission to the agent of the bank to carry with him the confederate notes now belonging to it, in order to pay the balance due banks in the confederacy, and to invest the surplus in bills of exchange, or in any other way not incompatible with the spirit of this agreement." Signed by Augt. Montrieul, cashr. And said
19 claimant avers that the said sealed package, bearing the seal of the bank, contained treasury notes of the said so-called Confederate States, and said package so containing said notes was brought by the said Steever, under and by virtue, and in accordance with, the permit of the said Benjamin F. Butler, and the said notes were used in the manner contemplated by said memoranda of said bank, which was submitted to said General Butler, and on which his said permit was granted, and not otherwise; and said cotton was purchased with part of the money or treasury notes of the said so-called Confederate States, thus brought through the said lines in virtue of said permit and authority so by the said general in command granted; and said cotton was never used for any purpose, but was stored away and kept for the use of said bank, to enable it to meet its liabilities and engagements, and for no other purpose, and this the claimant is ready to verify; wherefore he prays that no forfeiture or condemnation be had under said allegation in said information.

And for further plea to the whole of said information the said claimant doth aver, allege, and plead, that no seizure of said cotton sought to be condemned was ever made, or caused to be made, by the President of the United States, and the said cotton had not been seized and was not in possession of the marshal of said district at the

time of the exhibition of said information against the same as alleged, and this the said claimant is ready to verify; wherefore, he prays judgment, that said information and the proceedings thereunder be dismissed.

And for further pleas said claimant says, avers, propounds, and pleads, that the said cotton in said information mentioned was not seized during any insurrection against the government of the
20 United States, as contemplated by the act of the 6th August, 1861, upon which the information is predicated, and this he is ready to verify; wherefore, he prays judgment, &c.

And the said claimant, by way of further plea, as well as answer, doth say and propound that no proclamation has been made or published by the President of the United States since the passage of said act of 6th August, 1861, as presented and specified in said act, and this he is ready to verify; wherefore, &c., &c.

And for further plea and answer, said claimant denies that any lawful order of seizure was issued by the said district attorney, J. Q. Smith, esq., for seizing said cotton, or that any such order could be lawfully used; and so he says the said cotton was not lawfully seized before said information was filed.

And the said claimant doth allege and propound the following exceptive allegations to the said information, and doth aver, as he is advised and believes, and so states, that said information is not sufficient in law for the said informant, or the United States to have condemnation of the said cotton:

I. The said information purports to be in behalf of the United States and an informer, and fails to show who the informer is, or that he has afforded any information as the predicate of said information.

II. Said information is predicated upon an alleged seizure on land at a time of profound peace, and long after the civil jurisdiction of this court was established in said district, and when there was no insurrection or rebellion, and the laws of the United States were being fully enforced without opposition or obstruction.

III. Said information fails to show a valid seizure of said cotton as the predicate for the jurisdiction of said court.

21 4. Fails to show that the President of the United States made any proclamation after the passage of the act on which the proceedings are founded, to wit, the act of the 16th August, 1861, as set forth and required by said act as necessary to precede the right of seizure of said cotton.

5. Said information fails to show at what time in the year 1865 said cotton was used and employed in aiding, abetting, and promoting insurrection and rebellion against the United States.

6. Said information contains a misjoinder of causes of forfeiture.

6½. Said information fails to state the causes of condemnation or forfeiture in such manner that a clear and distinct issue may be made thereon, and so that the evidence may be confined to the matters in issue.

7. Fails to show that the President caused said cotton to be seized, or that it was seized or captured during any insurrection.

8. Said information sets forth a warrant of seizure was issued, but fails to show that said warrant for the seizure of said cotton was predicated on any oath or affirmation, as required by the Constitution of the United States.

9. Said information fails to show or set forth all the facts necessary to give this court jurisdiction, which facts should affirmative appear.

10. The allegation in said information that said cotton "was used with the knowledge and consent of the owners thereof, by selling and subscribing the same to what was known as the so-called Confederate States produce loan, for the defence of the Confederate States, is repugnant as involving a sale and a loan.

11. That at the time of the alleged seizure of said cotton, as in said information is alleged and set forth, there was no law of the land authorizing such seizure, or the proceedings under the same had in this case, the said act of 1861, on which said proceedings are based, being limited to the time during an insurrection in the United States; and the alleged seizure in this case was made after the President of the United States had, by public proclamation, made known that the insurrection had ceased, and that peace had been established in the State of Alabama and other States.

12. That said information assumes that the said act of 6th August, 1861, was intended to apply to seizures on land in times of peace; and if such be the true construction, the same is unconstitutional and void, because it deprives the citizen of his property without due process of law. It takes from the claimant the right of trial by jury; it is an enlargement of the admiralty jurisdiction of the District Court, unwarranted by the Constitution.

13. Said act of 6th August, 1861, is invalid.

Wherefore, this claimant prays that this honorable court will pronounce against the demand set up in the said information, and mentioned and set forth [forth] with costs.

CHILTON & RICE,
Proctors for Josiah Morris.

Sworn to and subscribed before me this the 9th day of June, 1866, by Josiah Morris.

E. C. V. BLAKE,
Cl'k Dist. Court for Mid. Dist. of Alabama.

District Court United States for the middle district of Alabama.

UNITED STATES
vs.
159 BALES COTTON.

Comes Josiah Morris and makes oath that the Bank of Louisiana, on whose behalf this claim is made, is the true and bona fide owner of 155 bales of the cotton mentioned in the said libel of information, and

that no other person is the owner thereof; and he further states that he is duly authorized by the owner to make said claim.

JOSIAH MORRIS.

Sworn and subscribed this the 20th Dec'r, 1866, in open court, before me.

RICHARD BUSTEED,
U. S. District Judge.

(For Exhibit "A," see page of this record, 34.)

23 In the District Court of the United States for the middle district of Alabama.

Finding and decrees.

THE UNITED STATES
vs.
159 BALES OF COTTON,
Bank of Louisiana,
claimant.

As matters of fact, I find:

1. That at the time of the purchase by George G. Stever of the cotton which is the subject of these proceedings the inhabitants of the State of Louisiana, in which State the said Stever resided, and of which the Bank of Louisiana was an incorporated association, and the inhabitants of the State of Alabama, in which State the said cotton was raised and purchased by said Stever for said bank, were in a state of insurrection against the United States, and were subject to the provisions of an act of Congress, entitled "An act further to provide for the collection of duties on imports, and for other purposes," approved July 13, 1861.

2. That the said George G. Stever, acting as agent for and on behalf of the said Bank of Louisiana, on or about the 11th day of September 1862, passed through the military lines of the United States from out of the State of Louisiana into the State of Alabama, and in the month of October, 1862, in Alabama, traded for said cotton, and purchased the same for the Bank of Louisiana.

3. That the said cotton, after its purchase by the said Stever for the said bank, was taken possession of by Josiah Morris, act-
24 ing upon this behalf as agent for the said Bank of Louisiana, the claimants in these proceedings.

4. That the said Stever had no license or permit from the President of the United States, either for himself or the Bank of Louisiana, to trade or hold commercial intercourse with the inhabitants of the State of Alabama, and that such trading, as he pursued in respect of this cotton, and the commercial intercourse he had relating thereto, were against the statute in such case made and provided.

5. That the value of the said cotton, less certain allowances made to said Josiah Morris for moneys paid by him for its care and car-

riage, is twenty-five thousand and sixty-nine dollars and seventy cents.

And as matter of law, find—

That the said cotton upon its purchase, as aforesaid, became and was forfeited to the United States, and became and was its property.

And it is ordered, adjudged, and decreed that the said cotton be forfeited to the United States, and judgment for the value thereof, namely, twenty-five thousand and sixty-nine dollars and seventy cents, together with costs, is hereby decreed against the stipulators and claimants, for which the United States shall have execution.

Montgomery, Dec. 20, 1866.

RICHARD BUSTEED,
Judge of the District Court of the United States for Alabama.

Filed December, 20th, 1866.

E. C. V. BLAKE, *Clerk.*

25 District Court of the United States for the middle district of Alabama.

UNITED STATES OF AMERICA:

The President of the United States of America, to the marshal of, in, and for said district, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of Josiah Morris, William H. Smith, and William C. Ray, of said district, you cause to be made the sum of twenty-five thousand and sixty-nine and 70-100 dollars, with interest thereon from the twentieth day of December, A. D. 1866, which the United States of America, at a term of said court, began and held on the fourth Monday of November, 1866, have recovered against them for their damages; also the sum of two hundred and ten dollars and fifty cents, which to the United States of America, in the same court, was adjudged for costs on charges in that said behalf expended; whereof the said Josiah Morris, William H. Smith, and W. C. Ray convicted, as appears of record; and that you have the said sum of money before the said District Court on the fourth Monday of May next, at the place of holding said court, at Montgomery, to render to the said United States of America said sum of money and the said damages and costs aforesaid; and have you then and there this writ.

Witness Hon. Richard Busteed, judge of the court aforesaid, this fourth Monday of November, in the year of our Lord one thousand eight and sixty-six.

[SEAL OF THE COURT.]

26 Issued the second day of January, in the year of our Lord one thousand eight hundred and sixty-seven.

Attest: A. C. V. BLAKE,
Clerk D. C., Middle District of Alabama.

*Marshal's return.—Received, Jan.*7, 1867.

Rec'd twenty-six thousand and fifteen dollars and thirty-four cents, in full satisfaction of the within execution.
Jan. 8, 1867.

JOHN HARDY, *Marshal.*

District Court of the United States for the middle district of Alabama.—Nov. term, 1866.

Order of distribution.

U. S. OF AMERICA
vs.
150 BALES OF COTTON, Bank of Louisiana, through Josiah Morris, claimant.

In these proceedings, a decree of condemnation having heretofore been rendered against one hundred and fifty-four bales of cotton, and a judg't for the value thereof, namely, twenty-five thousand and sixty-nine dollars and seventy cents, against Josiah Morris, Wm. H. Smith and Wm. C. Ray, sureties on replevy bond, and execution ordered thereon, it is now ordered as follows:

1st. That seven (7) per cent of the amount of said judg't, when collected, be paid over the U. St. dist. att'y, James Q. Smith, as a reasonable fee for his services rendered in the prosecution of these proceedings.

27 2d. That one and one half of one ($1\frac{1}{2}$) per cent of the amount of said judg't, when collected, be paid over to the U. S. Marshal, John Hardy, as a reasonable fee for his services rendered in these proceedings.

3d. That one and one-half of one ($1\frac{1}{2}$) per cent. of the amount of said judg't when collected, be paid over to E. C. V. Blake, clerk of said court, as a reasonable fee for his services rendered in these proceedings.

4th. That after all the costs, charges, and disbursements legally incurred herein are deducted from the amount of said judg't, one-half of the remainder to be paid over to James H. Weaver, who has heretofor lodged an information with the U. S. dist. att'y, which information is to be filed in the clerk's office herewith, the other half to be held in the registry of the court, subject to the order of the treasurer of the U. S., as provided by law.

5th. The clerk will take and file receipts under this order, with the papers in these proceedings.

Dec. 29, 1866.

RICHARD BUSTEED,
United States District Judge for Alabama.

28 District Court of the United States for the middle district of Alabama.

UNITED STATES
vs.
159 BALES COTTON.

Be it remembered, that on the trial of the above-entitled cause, at the fall term of said court, 1866, being on the 20th day of December, of the said year, the district attorney moved to strike the claim and answer from the file, because the same were not sworn to according to the rules which obtain in admiralty practice, which motion the court allowed, and the claimant excepted, and required the claimant to make the additional affidavit which appears on the answer, which answer, claim, pleas, and exceptive allegations were then refiled. The several exceptive allegations contained in said answer were then taken up and severally considered by the court, and the court decided that said several exceptive allegations, as the same appears in said answer of said claimant, which answer is made a part of the record of this cause, with the affidavit thereto attached be overruled, and the defendant excepted, and the defendant excepted severally to the overruling of each of said exceptive allegations; and thereupon, before proceeding with the trial on the merits, the claimant prayed the court that a jury might be empannelled to try the facts at issue in said cause, but the court refused to allow to the claimant a jury trial, and held that in such cases the claimant was not entitled to a trial by jury, to which decision and ruling of the court the claimant excepted.

The United States having proved by William C. Ray that he, as a cotton broker, in September, 1862, purchased for one
29 William Knox said cotton from William R. Picket, who sold the same, as the administrator of the estate of Albert I. Picket, deceased, and said William Knox gave a check on the Central Bank for the amount of said cotton, said bank being located in the city of Montgomery, Alabama; and that in October, of the same year, he, the said Ray, purchased said cotton from said Knox for one G. G. Stever, who alleged he was agent for the Bank of Louisiana, and who gave his check on the said Central Bank for the purchase money as such agent, and that said agent resided then in New Orleans, but his family lived in Louisville, Kentucky. The said claimant introduced, as a witness, said William Knox, who testified that he was, during the year 1862, the president of the said Central Bank on which said checks were drawn, and asked said witness in what kind of currency was it understood said check given by him should be paid.

The question was objected to, the objection sustained, and the claimant excepted.

The claimant asked said Knox to state in what currency the check drawn by said Stever was paid, which, being objected to by the attorney for the U. States, the court refused to allow the said witness to answer the question to which refusal the claimant excepted. The

claimant then asked said Knox to state whether the fund of the Bank of Louisiana in the said Central Bank to meet said check was not confederate treasury notes, which, being objected to, the objection was sustained, and claimant excepted.

The attorney for the United States asked a witness (William
30 C. Ray) what was the highest value of cotton, such as this in controversy, from September, 1862, to the present time. The claimant objected to proof of value before the seizure in this case. The court overruled the objection, and the witness answered "between 30 and 35 cents," and the claimant excepted to the admission of such proof.

The claimant offered to read in evidence a duly certified transcript of the proceedings had in the Circuit Court of Montgomery county, Alabama, in a case wherein Edward H. Wilson is plaintiff in a foreign attachment against the Bank of Louisiana, which attachment was issued on the 10th day of July, 1865; and on the 12th day of said month, the same was levied on the cotton in controversy, which cotton was replevied by Joseph Morris, who puts in this claim, as shown by his bond in such transcript, but said transcript was objected to as irrelevant by the attorney for the United States, which objection was sustained by the court. A true copy of said transcript is hereto attached, marked Exhibit A, and is made part hereof. Said transcript having been so excluded by the court, claimant excepted.

The claimant then offered the pass given by Major General B. F. Butler, to G. G. Stever, as follows:

"HEADQUARTERS, DEPARTMENT OF THE GULF,"
New Orleans, September 11th, 1862.

Mr. G. G. Stever, agent of the Bank of Louisiana, has a safe conduct through my lines, to convey with him a sealed package under the seal of the Bank of Louisiana, of whatever size it may be bearing that seal, such package not to be searched or interfered with,
31 and also to return through the lines with safe conduct, he reporting himself on his return, with whatever he may have on his return to these headquarters. His personal baggage will be searched as usual.

(Signed) BENJAMIN F. BUTLER,
Maj'r General Commanding.

Which pass was read without objection.

The claimant introduced Josiah Morris as a witness, and asked of whom he obtained the possession of the cotton in dispute, who answered that he had obtained the possession from the sheriff of Autauga county. The claimant then asked said witness, "how he obtained said cotton?"

To this question the district attorney of the United States objected, and the court sustained the objection, and the claimant excepted. The claimant then, in order to show that this cotton had been seized by the Treasury Department of the United States, and after a full investigation had been released, offered an original letter of H. M.

Buckley, supervising special agent of the the Treasury Department, a copy of which is hereto attached, marked Exhibit "B," accompanied by, and offered in connection, with a letter from the Secretary of the Treasury of the United States hereto attached, marked Exhibit "C," which papers were severally objected to as irrelevant; and the court sustained the objection made to them, and excluded them, to which decision of the court the said claimant excepted.

The claimant then read in evidence the statement hereto annexed, marked Exhibit "D," being the evidence of William R. Picket, agreed upon by the attornies in the case, said Picket being absent and sick.

32 Said claimant offered to prove by Josiah Morris, who puts in this claim, that since he had taken possession of said cotton, and before it was seized under the process in this case, he had expended, as bailee of said cotton, a considerable sum for repairs to said cotton and insurance, which proof the court excluded, and the claimant excepted.

The district attorney offered to prove that William R. Picket, who sold said cotton as administrator of A. J. Picket, had, during the late rebellion, in the year 1863, acted as the quartermaster general for the State of Alabama, having his office in Montgomery, and had dealt out clothing for Alabama soldiers engaged as soldiers in the so-called confederate army. This proof claimant objected to, but the objection was overruled and the proof admitted, and the claimant excepted.

The claimant offered proof showing that he had paid taxes on said cotton to James Berney, the commissioner of internal revenue for the State of Alabama, but the court excluded this proof, and the claimant excepted.

The claimant offered to prove by John Hardy, the marshal of said district, that said cotton was not actually seized at any time before the information was filed in this case, and that the only seizure that was made was upon a warrant issued upon such libel of information. This proof was objected to and ruled out by the court, and the defendant excepted.

Claimant asked said Hardy to state what he did as respects

33 said cotton as constituting the alleged seizure thereof under the warrant of seizure issued in this case. The question was objected to, and the objection was sustained by the court, and the claimant excepted.

The foregoing being substantially all the proof in the cause on both sides, the court gave judgment of condemnation, as appears by his decree. All which exceptions, respectively, are allowed by the court, and this is signed and sealed as a record of such exceptions by the court, and ordered to be enrolled as a part of the record in said cause.

Dated Dec. 7th, 1867.

[SEAL.]

RICHARD BUSTEED,
Judge Dist. Court Ala.

34 *Exhibit "A," to answer and record of exceptions.*

CIRCUIT COURT, *Mont'g County:*

The following is a correct copy of the papers in the case of Edward H. Wilson *vs.* The Bank of Louisiana, together with the orders, returns, &c., &c.

Attachment in said court.

HEADQUARTERS 16TH ARMY CORPS,
Montgomery, Ala, July 10th, 1865.

J. H. NETTLES, justice of the peace in and for said county:

You are hereby authorized to issue a writ of attachment at the suit of E. H. Wilson against The Bank of Louisiana, and appoint the necessary bailiffs to execute the necessary process, levying the same upon any property of said bank within your jurisdiction upon proper affidavits and bond being filed with you. You will make the writ returnable to the first properly organized court under the laws of the United States having jurisdiction in such cases.

By order of Maj. Gen. A. J. Smith.

J. HOUGH,
Lt. Col, A. A. G.

STATE OF ALABAMA, *Montgomery County*:

Before me, Jas. H. Nettles, a justice of the peace for said county, personally appeared Edward H. Wilson, who, being duly sworn, deposeth and saith that he is a resident of New Orleans, Louisiana, and that The Bank of Louisiana, a foreign corporation, organized under the laws of the State of Louisiana, is justly indebted to him, the said Edward H. Wilson, in the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin, after allowing all off-
35 sets and discounts, and that the said Bank of Louisiana, to the best of his knowledge, information, and belief, has not sufficient property in the State of Louisiana wherefrom to satisfy the debt, and that this attachment is not sued out for the purpose of vexing or harrassing the said defendant, or other improper motive.

EDWARD H. WILSON.

Sworn to before me this 10th July, A. D. 1865.

J. H. NETTLES, *J. P.*

[5 cent stamp.]

Having been satisfied by the evidence that the stamps on this instrument were not withheld to hinder or delay the payment of the revenue of the United States, but from accident,and the impossibility of obtaining the stamps at the time, I have imposed and cacelled the appropriate stamps, and remitted the penalty.

Dec. 12th, 1865.

JAMES BERNEY,
Col't 2d List Ala.

STATE OF ALABAMA, *Montgomery County:*

Know all men by these presents that we, Edward H. Wilson, J. F. Johnson, D. Browder, and A. D. Witherspoon, are held and firmly bound unto the Bank of Louisiana in the sum of one hundred and eighty-six thousand eight hundred and twenty-five dollars, to be paid to the said Bank of Louisiana, heirs, executors, and administrators, jointly, severally, and firmly by these presents. Sealed with our seals and dated this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

36 The condition of the above obligation is such, that whereas the above bound Edward H. Wilson, has, on the day of the date hereof, prayed an attachment at the suit of himself against the estate of the above-named The Bank of Louisiana for the sum of ninety-three thousand four hundred and twelve 50-100 dollars, and has obtained the same returnable before the next term of the Circuit Court of said county: Now if the said plaintiff shall prosecute his attachment to effect, and pay the defendant all such costs and damages as it may sustain by reason of the wrongful or vexatious sueing out of such attachment, then this attachment to be void, otherwise to remain in full force and effect.

[SEAL.] EDWARD H. WILSON.
[SEAL.] J. F. JOHNSON.
[SEAL.] D. BROWDER.
[SEAL.] A. D. WITHERSPOON.

The State of Alabama, Montgomery county, to any sheriff of the State of Alabama, greeting:

Whereas Edward H. Wilson, a citizen of the State of Louisiana, hath complained on oath to me, J. H. Nettles, a justice of the peace for said county, that the Bank of Louisiana, a corporation organized under the laws of said State of Louisiana, is justly indebted to him in the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin, and has made affidavit and given bond as required by law, you are hereby commanded to attach so much of the estate of said Bank of Louisiana as will be of value sufficient to satisfy the said debt and costs, and such estate, unless replevied, so to secure,

37 that the same may be liable to further proceedings thereon, to be had before the court, when and where you must make known how you have executed this writ.

Witness my hand this 10th day of July, 1865.

J. H. NETTLES, *J. P.*

[U. S. rev. stamp, 50 cents.]

"*Endorsements.*"

MONTGOMERY ALA., *July 10th*, 1865.

I acknowledge myself security for all the costs of the above-mentioned case.

H. C. SEMPLE.

Having been satisfied by evidence that the stamps were not withheld from this instrument to evade or delay the payment of the revenue, but from accident, and the impossibility of obtaining them at the time, I hereby remit the penalty, and impose and cancel the proper stamps.

December 12th, 1865.

JAMES BERNEY,
Col'r 2d Dis. Ala.

STATE OF ALABAMA, *Montgomery County:*

Received for execution this 11th July, 1865.

W. H. OGBOURN, *Bailiff.*

Levied this attachment on thirty-four (34) bales cotton as the property of the defendant, stored on plantation of Alexander W. McDade, 3 o'clock p. m., July 11th, 1865.

WM. H. OGBURN, *Bailiff.*

Levied this attachment on one hundred and ninety-eight bales of cotton, as the property of defendant, stored on the plantation of Col. Julius C. B. Mitchell, in Montgomery county, half-past 3 o'clock p. m., July 11th, 1865.

WM. H. OGBURN, *Bailiff.*

Levied this attachment on twenty-seven bales of cotton, as the property of defendant, stored on the plantation of Wm. E. Lucas in Montgomery county, twenty minutes past six o'clock p. m., July 11th, 1865.

W. H. OGBURN, *Bailiff.*

38 STATE OF ALABAMA, *Montgomery county:*

JULY 11TH, 1865.

EDWARD H. WILSON
vs.
THE BANK OF LOUISIANA.

Attachment returnable to the next term of the Circuit Court of said county.

To WM. OGBURN:

You are hereby appointed bailiff to execute the said process in said cause in Montgomery county. This appointment is made under the authority vested in me by order of Maj. Gen. A. J. Smith, 16th army corps, U. S. You will proceed to execute the said process according to law, and return the same, with your action thereon, to the next term of the Circuit Court of said county.

J. H. NETTLES,
Justice of the Peace.

The State of Alabama, Montgomery county, to any sheriff of the State of Alabama, greeting:

Whereas Edward H. Wilson, a citizen of the State of Louisiana, hath complained on oath to me, J. H. Nettles, a justice of the peace for said county, that the Bank of Louisiana, a corporation organized under the laws of the State of Louisiana, is justly indebted to him in the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin, and has made affidavit and given bond as required by law, you are hereby commanded to attach so much of the estate of said Bank of Louisiana, as will be of value sufficient to satisfy the said debt and costs, and such estate, unless replevied, so to secure, that the same may be liable to further proceedings thereon, to be had before the Circuit Court of Montgomery county at its next term, when and where you must make known how you have executed this writ.

39 Witness my hand this 10th July, 1865.

JAS. H. NETTLES, *J. P.*

"*Endorsements.*"

This is a branch writ of attachment, and with the original writ in Montgomery county, and another branch writ to Lowndes county, forms but one proceeding in suit in attachment, and are for the same cause of action, constituting but one suit.

J. H. NETTLES, *J. P.*

AUTAUGA COUNTY, *July* 11*th*, 1865.

Levied this attachment this day on fifty-three bales of cotton, marked "Z. Pope," on the plantation of Mrs. M. F. Pope, in said county, as property of the defendant.

F. C. RANDOLPH, *Bailiff.*

AUTAUGA COUNTY, *July* 12*th*, 1865.

Levied this attachment this day on one hundred and fifty-nine bales of cotton, marked W. R. P., (a,) on the plantation of A. Pickett's estate, in said county, as the property of the defendant.

F. C. RANDOLPH, *Bailiff.*

AUTAUGA COUNTY, *July* 12th, 1865.

Served this attachment this day on one hundred and five bales of cotton, marked T. P. F., on the plantation of the estate of Dr. T. P. Frith, in said county, as property of the defendant.

F. C. RANDOLPH, *Bailiff.*

STATE OF ALABAMA, *Montgomery County*:

JULY 11TH, 1865.

EDWARD H. WILSON
vs.
THE BANK OF LOUISIANA.

40 Attachment returnable to the next term of the Circuit Court of said county.

To FRANCES C. RANDOLPH:

You are hereby appointed a bailiff to execute and return this

branch writ of attachment in said cause, in the counties of Lowndes and Autauga. You will execute and return the same according to law and the precepts thereof. You are appointed under authority vested in me by the order of Maj. Gen. A. J. Smith, commanding 16th army corps, U. S.

J. H. NETTLES,
Justice of the Peace.

The State of Alabama, Montgomery county, to any sheriff of the State of Alabama, greeting:

Whereas Edward H. Wilson, a citizen of the State of Louisiana, hath complained on oath to me, J. H. Nettles, a justice of the peace for said county, that the Bank of Louisiana, a corporation organized under the laws of the said State of Louisiana, is justly indebted to him in the sum of ninety-three thousand four hundred and 50-100 dollars, and has made affidavit and given bond as required by law, you are hereby commanded to attach so much of the estate of the said Bank of Louisiana, as will be of value sufficient to satisfy the said debt and costs, and such estate, unless replevied, so to secure, that the same may be liable to further proceedings thereon, to be had before the next Circuit Court of said county, at when and where you must make known how you have executed this writ.

Witness my hand this 10th July, 1865.

J. H. NETTLES, *J. P.*

41 Endorsed: This is a branch of the original writ of attachment issued in this case, and, together with another branch writ to Autauga county, constitute but one writ, and is for the same cause of action.

J. H. NETTLES, *J. P.*

LOWNDES COUNTY, *July 12th*, 1865.

Levied this attachment this day on one hundred and thirty-four bales of cotton, marked W. B. Hall, Lowndes county, Ala., on the plantation of Dr. W. Hall, in said county, as the property of the defendant.

F. C. RANDOLPH, *Bailiff.*

LOWNDES COUNTY, *July 12th*, 1865.

Levied this attachment on fifty bales of cotton, marked "J. B.," on the plantation of Judge J. Bragg, in said county, as the property of defendant.

F. C. RANDOLPH, *Bailiff.*

Circuit Court of Montgomery county, Alabama.—Fall term, 1865.

EDWARD H. WILSON, plaintiff,
vs.
THE BANK OF LOUISIANA, a corporation organized under the laws of the State of Louisiana, defendant.

1. The plaintiff claims of the defendant ninety-three thousand

four hundred and twelve 50-100 dollars, in coin, due by virtue of the following facts, to wit: On the 11th day of October, 1862, the defendant, by the name and description of Aug. Montreul,
42 cashier, and by its said cashier, executed and delivered to the plaintiff its four checks, otherwise called bills of exchange, in substance as follows:

NEW ORLEANS, 11*th October*, 1862.

Exchange for $25,000.

At sight of this first of exchange,(second unpaid,) pay to the order of E. H. Wilson twenty-five thousand dollars in coin, value received, and charge the same to account of this bank.

AUG. MONTREUL.

To R. M. DAVIS, Esq., *President, Columbus, Georgia.*

NEW ORLEANS, 11*th October*, 1862.

Exch'e for $25,000.

At sight of this first of exchange,(second unpaid,) pay to the order of E. H. Wilson twenty-five thousand dollars in coin, and charge the same to account of this bank.

AUG'T MONTREUL, *Cashier.*

To R. M. DAVIS, *Pres., Columbus, Georgia.*

NEW ORLEANS, 11*th October*, 1865.

Exch. for $25,000.

At sight of this first of exchange,(second unpaid,) pay to the order of E. H. Wilson twenty-five thousand dollars in coin, value received, and charge the same to account of this bank.

AUG'T MONTREUL.

To R. M. DAVIS, *Pres't, Columbus, Georgia.*

NEW ORLEANS, 11*th October*, 1862.

Exchange for $3,581 62-100.

At sight of this first of exchange,(second unpaid,) pay to the order of E. H. Wilson thirty-five hundred and eighty one 62-100 dollars in coin, value received, and charge the same to account of this bank.

AUG'T MONTREUL, *Cashier.*

To R. W. DAVIS, *Pres't, Columbus, Georgia.*

43 The plaintiff further avers, that at the very when checks or bills of exchange were executed, and as part of the same transaction, the defendant, by the name and description of Aug't Montreul, cash'r, and by Aug't Montreul, its cashier, entered with the plaintiff into and signed and delivered a written contract in relation to the said identical checks or bills of exchange hereinabove described, which written contract is in substance as follows: The subscribers A. Montreul, cashier, on the part of the Bank of Louisiana, and Mr. E. H. Wilson for himself, have made the following agreement, which is signed in duplicate, and copies mutually exchanged.

The Bank of Louisiana will give its four checks to Mr. E. H. Wilson, three for the sum of twenty-five thousand dollars each, and one for the sum of thirty-five hundred and eighty-one 62-100 dollars, making together seventy-eight thousand five hundred and eighty-one 62-100 dollars in coin, to be delivered to him in Columbus, Georgia, in payment of which Mr. E. H. Wilson has this day paid to the Bank of Louisiana the sum of eighty-six thousand four hundred and thirty-nine 78-100 in the notes of this bank with this condi-
44 tion: That inasmuch as Mr. Davis, president of the Bank of Louisiana may not be in Columbus, or from some other causes not now foreseen, may delay the payment of the bank's checks, or possibly frustrate this arrangement entirely, it is understood that Mr. E. H. Wilson will grant a delay of twelve weeks, or longer, at his discretion, at the end of which term he may annul this contract and demand the repayment from this bank of the amount paid to it with interest at 7 30-100 per cent. per annum from date, but without claim for damages.

And moreover, as the arrangement is made in good faith, neither party will take any technical advantage of the other.

New Orleans, 11th October, 1862.

(Signed) E. H. WILSON.
AUG'T MONTREUIL, *Cash'r.*

The plaintiff further avers, that the said checks or bills of exchange were directed to and drawn on R. M. Davis, the president of the said bank of Louisiana, the defendant, as the president thereof, and have never been paid, in whole or in part, although presented to the said president Davis for payment, before the commencement of this suit, in due time, and although the defendant received from the plaintiff the full consideration and value so received from the plaintiff. The said checks or bills were due and unpaid when this suit was commenced, and are still due and unpaid, with the interest thereon.

2nd count.

The plaintiff claims of the defendant the further sum of one hun-
dred and twenty thousand dollars due when four other bills
45 of exchange, or checks of the same tenor and effect as the four checks or bills set out in the first count; and the plaintiff avers that the defendant, acting by its cashier, A. Montreuil, on the 11th day of October, 1862, at New Orleans, in Louisiana, drew the said bills or checks on the said R. M. Davis, president of the said Bank of Louisiana, and addressed and directed the same to him at Columbus, Georgia, by the name of R. M. Davis, president, and in consideration of the sum of eighty-six thousand four hundred and thirty-nine 78-100 dollars, paid by the plaintiff to the defendant, at the time in New Orleans, delivered the said checks or bills to the plaintiff, whereby the defendant became liable to pay to the plaintiff the said sum of money specified, on the demand being made by him in Columbus, Georgia, and the plaintiff avers, that afterwards he did

apply at the place in Columbus, Georgia; commonly used by the said R. M. Davis for conducting the business of the defendant in Columbus, on or about the 10th day of November, 1862, for the purpose of demanding, and did demand, the same, but the said R. M. Davis was absent from the city; and the plaintiff alleges that he was excused from protecting said bill or taking any other steps against the defendant, by the terms of a certain agreement, in words and figures, the same as the agreement put out in the first count, which was entered into by the defendant at the time of delivery of said bills to him; and in the failure of the said R. M. Davis to be in Columbus, Georgia,
46 so as to pay said bills or checks, or to provide therefor, the said Bank of Louisiana became liable to pay to the plaintiff the said amounts of coin mentioned in said bills or checks, and that though often requested, it has refused and failed to pay him the said sum of money, or any part thereof.

3rd count.

The plaintiff also claims of the defendant the further sum of one hundred and twenty thousand dollars due by the defendant to him by account stated on the 10th day of November, 1862, at Columbus, Georgia; and the further sum of one hundred and twenty thousand dollars due for money paid by the plaintiff at his request, on the 11th day of October, 1862; and the further sum of one hundred and forty thousand dollars due for that amount loaned by the plaintiff to the defendant, at his request, on the 11th day of October, 1862, which sums are all due and unpaid, though the defendant has often been requested to pay the same.

(Signed) GOLDTHWAITE, RICE & SEMPLE,
Plaintiff's Attorneys.

Endorsed: Filed in my office, November 25th, A. D. 1865. (Signed) W. P. Smith, clerk.

47 THE STATE OF ALABAMA, *Autouga County:*

Know all men by these presents that we, Josiah Morris, as principal, and William C. Ray, A. F. Given, E. H. Metcalfe, and D. Browder, as his sureties, are held and firmly bound unto Edward H. Wilson in the penal sum of one hundred and eighty-six thousand eight huudred and twenty-five dollars, for the payment of which unto said Edward H. Wilson we bind ourselves firmly by these presents. The condition of this obligation is such, that whereas the said Edward H. Wilson heretofore, to wit, on the 10th day of July, 1865, sued out an original attachment before James H. Nettles, a justice of the peace in and for Montgomery county, in said State, returnable to the then next term of the Circuit Court of said county of Montgomery, against the bank of Louisiana, for the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin; and whereas a branch writ of attachment to be served and levied in said county of Autauga, being but a branch of said original attachment,

was issued at the same time, to wit, on the 10th day of July, 1865, by the same justice, and returned to the same term of said Circuit Court as said original attchment was, to wit, to the term of said Circuit Court to be held next after the issue of said writ; and whereas said branch writ of attachment has been levied on one hundred and ninety-one bales of cotton in said county of Autauga; one hundred and fifty-five bales marked "W. P."; thirty-four marked "Z. P.", and two marked "W."; and whereas, by the ruling and de-
48 cision of said Circuit Court, the said cotton is subject to replevy; and whereas the above-named Josiah Morris is willing and desirous to replevy the said cotton, and now here does replevy the same: Now, if the defendant fails in the action, and the said Josiah Morris or his sureties will return the said cotton attached as aforesaid, within thirty days after judgment, then this bond to be void, otherwise to be of force.

Witness our hands and seals this 9th day of January, 1866.

[SEAL.]	(Signed)	JOSIAH MORRIS.
[SEAL.]		WLLIAM C. RAY.
[SEAL.]		A. F. GIVEN.
[SEAL.]		E. H. METCALF.
[SEAL.]		D. BROWDER.

Approved January 9th, 1866.

(Signed) A. G. STEWART,
Sh'ff of Autauga County.

THE STATE OF ALABAMA, *Montgomery County:*

Know all men by these presents that we, Josiah Morris, as principal, and William C. Ray, A. F. Given, E. H. Metcalf, and D. Browder, as his sureties, are held and firmly bound unto Edward H. Wilson in the penal sum of one hundred and eighty-six
49 thousand eight hundred and twenty-five dollars, for the payment of which unto said Edward H. Wilson we bind ourselves firmly by these presents. The condition of this obligation is such, that whereas the said Edward H. Wilson heretofore, to wit, on the 10th day of July, 1865, sued out an attachment before James H. Nettles, a justice of the peace in and for said county of Montgomery, returnable to the then next term of the Circuit Court of said county of Montgomery, against the Bank of Louisiana, for the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin; and whereas said attachment has been levied on two hundred and seventy-seven bales of cotton, to wit: 109 marked "J. C. B. M.;" 73 marked "J. C. B.;" 32 marked "A. McD.;" 51 marked "W. H.;" 12 marked "W. H. Lucas;" and whereas by order of said Circuit Court the said cotton is allowed to be replevied, and the above-named Josiah Morris is willing and desirous to replevy the same, and now here does replevy the same:

Now, if the defendant fail in the action, and the said Josiah Morris or his sureties will return the said cotton, attached as aforesaid,

within thirty days after judgment, then this bond to be void, otherwise to be of force.

Witness our hands and seals this 9th day of January, 1866.

[SEAL.]	(Signed)	JOSIAH MORRIS.
[SEAL.]		WILLIAM C. RAY.
[SEAL.]		A. F. GIVEN.
[SEAL.]		E. H. METCALF.
[SEAL.]		D. BROWDER.

Approved Jan. 9, 1866.

A. H. JOHNSON, *Sh'ff M. C.*

50 THE STATE OF ALABAMA, *Lowndes County:*

Know all men by these presents that we, Josiah Morris, as principal, and William C. Ray, A. F. Given, E. H. Metcalf, and D. Browder, as his sureties, are held and firmly bound unto Edward H. Wilson in the penal sum of one hundred and eighty-six thousand eight hundred and thirty-five dollars, for the payment of which unto the said Edward H. Wilson we bind ourselves firmly by these presents. The condition of this obligation is such, that whereas the said Edward H. Wilson heretofore, to wit, on the 10th day of July, 1866, sued out an original attachment before James H. Nettles, a justice of the peace in and for Montgomery county, in said State, returnable to the then next term of the Circuit Court of said county of Montgomery, against the Bank of Louisiana, for the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin; and whereas a branch writ of attachment, to be served and levied in said county of Lowndes, being but a part of said original attachment, was issued at the same time, to wit, on the tenth day of July, 1865, by the same justice, and returnable to the same term of said Circuit Court as said original attachment was, to wit, to the term of said Circuit Court to be held next after the issue of said writ; and whereas said branch writ of attachment has been levied on forty-nine bales cotton, marked "S.," and one hundred and twenty-five bales cotton, marked W. B. H., in the said county of Lowndes; and whereas by the ruling and decision of said Circuit Court, the said cot-

51 ton is subject to replevy; and whereas the above-named Josiah Morris is willing and desirous to replevy the said cotton, and now here does replevy the same: Now, if the defendant fails in the action, and the said Josiah Morris or his sureties will return the said cotton, attached as aforesaid, within thirty days after judgment, then this bond to be void, otherwise to be of force.

Witness our hrnds and seals this 9th day of January, 1866.

[SEAL.]	(Signed)	JOSIAH MORRIS.
[SEAL.]		WILLIAM C. RAY.
[SEAL.]		A. F. GIVEN.
[SEAL.]		E. H. METCALF.
[SEAL.]		D. BROWDER.

Approved 10th day of January, 1866.

(Signed) Z. S. HERBERT,
Sheriff Lowndes County.

THE STATE OF ALABAMA, *Montgomery County:*

I, William P. Smith, clerk of the Circuit Court in and for said county and State aforesaid, hereby certify that the foregoing is a full and complete and correct transcript of all the papers on file in my office in the case of Edward H. Wilson versus "The Bank of Louisiana," and that said case is still pending in said court undecided.

In testimony whereof, I hereunto set my hand this the 19th day of December, 1866.

(Signed) W. P. SMITH,
Clerk C. C. M. C.

[Three two-ct. stamps U. S. rev.]

52 *Exhibit "B."*

THE U. S. OF A.
vs.
159 BALES OF COTTON. } Dec. 20, '66.—R. B.

TREASURY DEPARTMENT,
OFFICE SUPERVISING SPECIAL AGENT,
Nashville, May 25, 1866.

Upon the letter of instructions from the Hon. Secretary of the Treasury, directing the release and delivery to the Bank of Louisiana of seven hundred and forty-nine (749) bales of cotton held by W. E. Dillin, at or near Montgomery, Ala., upon certain terms and conditions therein set forth, and with which terms and conditions the said bank has fully complied, the said cotton will be delivered to said bank, or its duly authorized agent, upon presentation of this certificate.

(Signed) H. M. BUCKLEY,
Supervising Special Agent, First Agency.

[Copy.]

Exhibit "C."

U. S. OF A.
vs.
159 BALES OF COTTON. } Dec. 20, '66.—R. B.

TREASURY DEPARTMENT, *April* 30, 1866.

SIR: It appearing to be clear that government can assert no claim to certain cotton claimed by the Bank of Louisiana, alleged to be under seizure in your agency, seven hundred and forty-nine (749) bales being held by W. E. Dillin, at or near Montgomery, except through proceedings for confiscation, the matter was referred to the Solicitor of the Treasury for his opinion as to the propriety and expediency of instituting proceedings for that purpose. He has replied that he thinks it exceedingly doubtful whether they could be
53 sustained, and he would regard their prosecution as unjust and inexpedient, even if they could be made successful.

You are accordingly authorized and instructed to release to the legal representatives of the bank all cotton held by you, or any of our agents, for my decision, on the ground that it had been illegally purchased by the bank during the continuance of the late rebellion, on condition, however, that the claimants first pay all costs or expenses, paid or incurred on its account by officers of the government, and on their executing and delivering to you a certificate of probable cause of seizure, which will acquit and hold harmless the government and all its agents from any claim for loss or damage growing out of the seizure, detention, and removal of said cotton.

Please report promptly your action under this letter.

Very respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

H. M. BUCKLEY, Esq.,
Sup'g Sp'l Agent, Nashvile, Tenn.

Exhibit D.

District Court U. States, middle district, Ala.

U. STATES
vs.
159 BALES COTTON.

The claimant expects to prove by Wm. R. Pickett that he, as the adm'r of his father, Albert J. Pickett, (dec'd,) raised the cot-
54 ton in question and packed the same, and kept the same packed and stored away on the plantation of the said estate, and that said cotton was the property of said estate, and the same remained on said plantation until after it was seized under process from this court.

That in September, 1862, he sold, as administrator of said estate of his father, and by virtue of an order duly granted by the Probate Court, the cotton in controversy to William Knox, through William C. Ray, a cotton broker, and received payment in full therefor; that said cotton was never subscribed to any cotton loan while it was the property of this affiant as administrator, and was never used or employed in any wise, in aid of said rebellion, by being subscribed or sold, given, loaned, or otherwise, and that said cotton was sold as aforesaid for Confederate treasury notes; that said Pickett never subscribed any cotton to said Confederate States "cotton loan" as adm'r or otherwise.

It is agreed that the foregoing statement be admitted as evidence in this cause, and as duly proved by the witness, Wm. R. Pickett.

Dec'r 20, 1866.

(Signed) CHILTON, RICE & MARTIN,
Atty's for Claimant.
J. Q. SMITH,
U. S. Att'y.

55 UNITED STATES
vs.
159 BALES COTTON, JOSIAH MORRIS, for Bank Louisiana, claimant.

Know all men by these presents that we, Josiah Morris and , are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, to be paid to the United States, to which payment, well and truly to be made, we hereby bind our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated this, the day of December, 1867.

Approved Dec. 7, 1867.

(Signed) RICHARD BUSTEED,
U. S. District Judge for Alabama.

Whereas the above bound Josiah Morris, as agent and claimant for the Bank of Louisiana, has appealed from a decree rendered by the District Court of the United States for the middle district of the State of Alabama to the Supreme Court of the United States, said decree being made in the above cause, and bearing date the 20th day of December, 1866, the United States being libellant, and the said Josiah Morris, as agent for the said Bank of Louisiana, is respondent:

Now, therefore, the condition of this obligation is such, that if the above bound appellant shall prosecute the said appeal with effect, and pay all such cost and expenses as shall be awarded against him as such appellant therein, then this obligation to be void,
56 otherwise to remain in full force and effect.

[SEAL.] (Signed) JOSIAH MORRIS.
[SEAL.] ALBERT ELMORE.

District Court of the United States for the middle district of Alabama.

UNITED STATES
vs.
159 BALES COTTON, JOSIAH MORRIS, agent and claimant for the Bank of Louisiana, respondent.

The above-named respondent, conceiving himself aggrieved, doth hereby appeal from the sentence and decree rendered in the above cause, on the 20th day of December, 1866, by the said District Court, to the Supreme Court of the United States; and he prays that this appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

This Dec. 7, 1867.

(Signed) JOSIAH MORRIS,
Agent and Claimant for the Bank of Louisiana.

The foregoing appeal is allowed. No bond for supersedeas being given the appeal is not to operate as a stay of execution.

Dec. 7, 1867.

(Signed) RICHARD BUSTEED,
Judge of the District Court of the United States for Alabama.

57 District Court of the United States for the middle district of Alabama.

UNITED STATES OF AMERICA:

I, E. C. V. Blake, clerk of the District Court of the United States for the middle district of the State of Alabama, in pursuance of an appeal granted in the case of "The United States of America *vs.* 159 Bales of Cotton, Bank of Louisiana, claimant," do hereby certify that the foregoing pages, numbered from number one to number fifty-six inclusive, contain a full, true, and correct transcript of all the proceedings had in said cause, as the same appears of record in my office; and I do further certify that the citation hereto attached, with the marshal's return thereon, and the replevy bond hereto attached, are the original citation and replevy bond in the said cause.

Witness my hand and the seal of the United States District Court for the middle district of Alabama this the 12th day of December, A. D. 1867.

[SEAL.] Attest: E. C. V. BLAKE,
Clerk U. S. Dist. Court Middle District of Alabama.

58 UNITED STATES OF AMERICA, *ss*:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the 1st Tuesday in December, A. D. 1868, pursuant to an appeal from a decree of the District Court of the United States for the middle district of Alabama, wherein Josiah Morris, agent and claimant for the Bank of Louisiana, is appellant, and you are appellee, to show cause, if any there be, why said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the honorable Richard Busteed, judge of the District Court of the United States for the middle district of Alabama, this the 7th day of December, 1867.

RICHARD BUSTEED,
Judge Dist. Court A.

Rec'd in office, Dec. 12th, 1867.

R. W. HENLY, *U. S. Marshal.*

Executed by serving copy of the within notice on F. Buybee, U. S. dist. att'y, middle district of Ala., this 12th day of Dec., 1867.

R. W. HENLY, *U. S. Marshal,*
Per J. B. SAMPLE, *Deputy.*

Fees—Service, 1 copy	$2 00
Milage	06
	$2 06

Endorsed: Citation of appeal in U. States *vs.* 159 Bales of Cotton, Morris, claimant, as agent for Bank of Louisiana.

59 Know all men by these presents that we, Josiah Morris and William H. Smith and William C. Ray, are held and firmly bound unto the United States of America in the sum of forty-six thousand two hundred dollars, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 13th day of June, 1866.

Whereas an information has been filed in the District Court of the United States against One hundred and fifty-four bales of cotton, for reasons and causes in said information mentioned; and whereas the said 154 bales of cotton are in the custody of the marshal of said district, under the process issued in pursuance of the prayer of said information; and whereas the value of said 154 bales of cotton has been agreed upon as twenty-three thousand one hundred dollars:

Now, therefore, the condition of this obligation is such, that in case the said 154 bales of cotton aforesaid shall be condemned as forfeited goods, if the said Josiah Morris or William H. Smith or William C. Ray, or either of them, or the heirs, executors, or administrators of either of them, shall thereupon pay into said court the sum of twenty-three thousand one hundred dollars, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] JOSIAH MORRIS.
[SEAL.] WM. H. SMITH.
[SEAL.] WILLIAM C. RAY.

SUPREME COURT OF UNITED STATES.

JOSIAH MORRIS, Agent and Claimant for Bank of Louisiana,

VERSUS

THE UNITED STATES.

BRIEF OF

W. P. CHILTON, of the Firm of Chilton & Thorington,

ATTORNEY FOR APPELLANTS.

SUPREME COURT UNITED STATES.

JOSIAH MORRIS, Agent and Claimant for the Bank of Louisiana,

vs.

THE UNITED STATES.

1. A valid and subsisting seizure at the time of filing the information, was indispensable to give the court jurisdiction.—*Morris and Johnson v. United States.* 7 Wal, 578.

The only seizure alleged to have been made in this case, was *under an order of seizure*, issued by the clerk of the United States District Court, at the instance of the District Attorney, after he had filed his information or libel. It is submitted that such seizure is unauthorized by law and was wholly void.

2. But this alleged seizure is denied by the sworn answer of the claimant—also, by his sworn plea. To this answer and plea, there was no replication, and the rule in such case is, that "a general replication is necessary to put in issue the averments in the answer, and unless filed, the truth of the answer will be deemed admitted.—See a very learned opinion on this point in the *Mary Jane*, 1 Blatchford & Howland, 390. The rule adopted by the supreme court (No. 27) requires the answer to be sworn to, and in such case there must be a replication.—The Mary Jane, *supra*; Benedict, § 367; Bett's Adm. Prac. p. 50.

3. The answer is responsive to the allegations of the libel of information as to the fact of seizure of the cotton,

and thus puts the onus of proving a seizure on the libellant. The seizure itself is a *jurisdictional fact*, without which the court has no jurisdiction.—*Morris & Johnson, supra.*

Now the bill of exceptions sets out all the proof.—See bottom of printed record, page 19, and there is no evidence of any seizure of the cotton. The libellant not only failed to prove that there had been a seizure, but objected to the proof offered to be made by the claimant showing that no actual seizure was made. The record recites that "the claimant offered to prove by John Hardy, the marshal of said District, that said cotton was not actually seized at any time before the information was filed in this case, and that the only seizure that was made, was upon a warrant issued upon such libel of information. This proof was objected to and ruled out by the court, and the defendant excepted." Again, "claimant asked said Hardy to state what he did as respects said cotton, as constituting the alleged seizure thereof under the warrant of seizure issued in this case; this question was objected to, and the objection was sustained by the court and the claimant excepted."—See printed record, p. 19. Thus the court deprived the claimant of the privilege of showing, that no seizure had been made, and that too by, perhaps, the only person who knew about the alleged seizure, the marshal, who says in his return to the warrant that he "arrested the cotton." This, we think, was clearly erroneous, and should reverse the cause.

4. This cotton was in the custody of the law, having been seized by order of the State court upon an attachment, at the time of the alleged seizure of the marshal, and therefore no valid seizure could be made by the latter.—See printed record, page 20.—*Tayler et al v. Carryl*, 20 How. 583; Conklin's Treatise, (4th Ed.) 276, 277, and cases there cited; but the court excluded a duly certified record from the State court showing this fact, and erred in the exclusion of it, not only for the reason above stated, viz: that it showed no valid seizure could be made, but also, because such proof connected Morris with the cotton and

showed that he was bailee both for the Bank of Louisiana and Edward H. Wilson, the plaintiff in the attachment.—*Kirk v. Morris*, 40 Ala. 225. Surely, Morris, the claimant, had the right to show his title, and show how he held the cotton, especially as this matter is stated directly in his answer.

5. But we were not only precluded by the court from showing there was no seizure, and that the cotton was in the custody of the State court and not liable to seizure, but we were precluded from showing that the same cotton had been previously seized by the United States, and was held, when the marshal alleges he arrested it, by a Treasury agent, by order of the Secretary of the Treasury—and that after a full investigation of all the facts and circumstances, the Secretary of the Treasury ordered it to be released upon the performance of certain conditions by the Bank of Louisiana, and that said conditions had been fully complied with.—See the letters and orders of Secretary of the Treasury of the United States, on pages of record 30 and 31. The Secretary of the Treasury had full power to cause this investigation.—See 12 Statutes at Large, p. 820. He had power to remit the forfeiture even after it was declared by the court.—*Ib.* 821, and see President Lincoln's proclamation, 13 Statutes at Large, 730, 1. Now, we respectfully insist that the District Attorney, upon his own mere motion without affidavits, and without any instruction from any superior officer of the government, could not legally cause a warrant of seizure to issue, and require the marshal to take the cotton from the custody of the Treasury department. He could as well have ordered him to seize upon any other property in the United States Treasury. The performance of the conditions of release have been complied with as shown by the Treasury agent, Mr. Buckley, (Record, page 30) and yet we are not allowed to prove this. The court held this proof *irrelevant*. (Record, page 19.) It is submitted that the decision of the Treasury Department, which had full power over the

subject is conclusive, and that this second effort to condemn it is oppressive and illegal. The United States said to the Bank of Louisiana; "we have, through the Treasury Department, fully investigated this case: under all the circumstances, even if the Government could condemn the cotton, which is doubtful, it would not be *just* to do so, (see Secretary's letter, Record, page 31) and if the Bank will pay all expenses incurred in the matter of the trial and give a certificate of probable cause, then the cotton shall be returned to the Bank of Louisiana"—all this expense, amounting to several hundred dollars, exclusive of attorney's fees, was paid by the Bank, and a certificate of probable cause given, and the cotton ordered to be released, and about the time it is to be delivered up, the District Attorney intervened and filed a libel of information and put it again in litigation. We insist that under these circumstances, the Government is clearly estopped in the matter of this proceeding, and if it was unjust for the Secretary of the Treasury to condemn the cotton, it becomes doubly so now, after what has transpired.—3 Bl. C. C. 325; 2 Pa. Rep. 546.

6. There are various other matters shown by the bill of exceptions, which put the district court clearly in error.

The claimant was not permitted to show "how he obtained said cotton." How otherwise could he prove title in himself?—See printed record, page 18. Was not permitted to show the sums of money paid upon the cotton for repairs, insurance, &c. Was not permitted to show that the Bank had paid the Government the tax on this cotton. Was not permitted to show that the checks drawn by the agent of the claimant in consideration of the purchase of this cotton, were paid.—See printed record, bottom of page 17.

On the other side, the United States were allowed to prove "what was the highest value of cotton, such as this in controversy, from September, 1862, to the present time," which the witness proved to have been between 30 and 35 cents. The cotton was "arrested," the marshal reports,

on the 11th May, 1866. The price, anterior to the seizure, it is submitted, had nothing to do with the case.

Again, the United States were permitted to prove that W. R. Pickett, who sold the cotton *as administrator of the estate of A. J. Picket, deceased*, to which estate the cotton belonged, had participated in the late rebellion. We are apprised of no law which works the *forfeiture of the assets of a dead man's estate*, because his *administrator* may not be loyal to the government, and unless there be some such statute, this proof was improperly admitted.—Printed record, 19.

7. The court below had no power to render judgment as is shown in the printed record, page 15—namely, "for twenty-five thousand and sixty-nine dollars and seventy cents, together with costs against the stipulators and claimants, for which the United States shall have execution," for the reasons: First, there was no stipulation, but simply a bond given, which was to be void "on condition that in case the said 154 bales of cotton should be condemned as forfeited goods, then if the said Josiah Morris, or Wm. H. Smith or William C. Ray, or either of them or the heirs, executors or administrators of either of them, shall thereupon pay into said court the sum of twenty-three thousand one hundred dollars." This is a common law bond under the seal of the parties, in contradistinction to a stipulation which is in the nature of a recognizance taken in court, without seal, and forming part of the record. And being a common law bond and not a stipulation, "the admiralty powers of the court could not properly be resorted to, for a summary remedy unknown to the common law." Conklin's Treatise, (4th Ed.) p. p. 534, 535. Second, No judgment could be rendered on it, even regarding it as an admiralty stipulation and subject to the summary jurisdiction of the admiralty court, until twenty days elapsed after the decree or judgment of condemnation.—See 89th section of the act of 1799; *McClellan v. The United States*, 1 Gallis R. 227; *Neilson v. The United States*, Peters C. C. Rep. 240; Conk. Trea. (4th Ed.) 535. Thirdly, But whether it be a

common law bond, or an admiralty stipulation, and if we concede that the court might have rendered a judgment upon it *instanter*, the parties to the bond, especially the sureties, Ray & Smith, who had the right to stand upon the terms of their contract to pay $23,000 in discharge of said bond, could not be held liable for more than that sum, and yet the court, after reciting that certain allowances had been made to Josiah Morris for monies paid by him for the care of said cotton and its carriage, gives judgment against him and his sureties for nineteen hundred and sixty-nine 70-100 dollars more than they have agreed to pay!—See bond in printed record, page 6, and judgment of court, pages 14, 15. The contract must be construed strictly and not be extended beyond the fair scope of its terms. This bond recited that the price of the cotton as agreed upon is $23,100 00, and this sum is to be paid, if the court condemns the cotton as forfeited, and yet these provissions are disregarded by the court, and the liability extended $1,969 70 besides the costs.—See *Miller v. Stewart*, 9 Wheat Rep. 680; *United States v. Robertson*, 5 Peters, 641; *same v. Boyd*, 15 Peters, 187.

8. The exceptive allegations, each of which was overruled, present several points for reversal. While none of them are waived, but are insisted on, it is merely necessary to call the attention of the court to the eleventh and twelfth exceptions. The statutes under which the proceeding in this case is instituted, were adopted as war measures. It is respectfully submitted that in a time of profound peace, when the ordinary remedies provided by law may be enforced in the courts, and when the citizen is shielded by the protection afforded by the constitution of the United States, there would be no security against unreasonable seizures and the utmost oppression, if without affidavit and without the responsibility of any person who may seize property and become informer, the district attorney may file an information and the property be seized under the semblance *of legal proceedings in the courts*, which seizure,

being under a warrant of the court, may ruin the party whose property is seized, and yet no one be responsible for the wrong. Such could hardly have been the intention of Congress. There must be a seizure first, then there is a jurisdictional predicate in proper cases for the information and warrant, not otherwise.—Conklin's Treaties, (4th Ed.) 512; *Morris & Johnson v. The United States*, 7 Wal. 578.

9. Lastly, We were denied a trial by jury. The record, (page 17) shows that the claimant demanded a jury trial, and that the court denied him this privilege, and that he duly excepted to the ruling of the court. This was clearly erroneous, as decided by this court.—*Armstrong's Foundry*, 6 Wal. 766, 770; *The Union Insurance Company*, 6 Wall. 759; *The Sarah*, 8 Wh. 394.

The proof being all set out, and showing that the court had no jurisdiction, this court as in the case of *Morris & Johnson, supra*, should dismiss the proceeding and order restitution.

W. P. CHILTON,
of the firm of Chilton & Thorington,
Attorney for Appellants.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

JOSIAH MORRIS, *Agent and Claimant for the Bank of Louisiana, Appellant,*
vs.
THE UNITED STATES.
} No. 221.

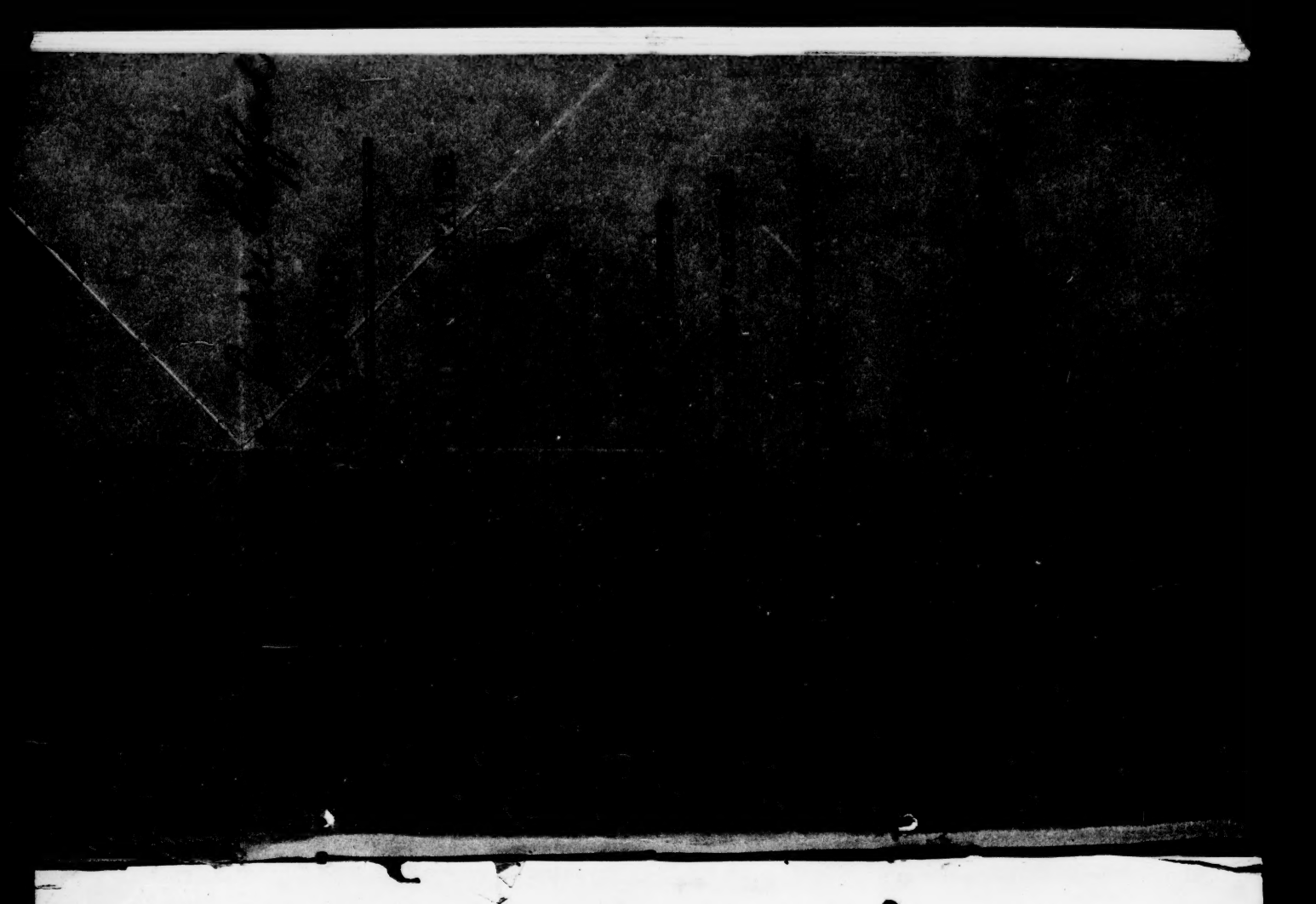
BRIEF OF THE UNITED STATES.

It appears with sufficient certainty in the transcript, that this is an information *in rem* against cotton alleged to have been seized on land and forfeited to the United States, under the acts of July 13, 1861, of August 6, 1861, and of July 17, 1862, (see transcript of Record in information, pp. 2, 3, and 4; marshal's return, p. 6; answer, p. 11; exception eleven, p. 13;) that it was tried in the district court as a suit in admiralty, and that the claimant's prayer for a jury was denied, (see p. 17;) and that the case is brought before this court ~~directly~~ from the district court by appeal, and not by writ of error ~~to the circuit court and thence to this court~~.

If this court can do anything more than dismiss the appeal, it can only order the decree reversed as irregular, the pleadings reformed, and a new trial had according to the course of the common law.

Union Ins. Co. vs. U.S. 6 Wall 759
Armstrong's foundry, 6 Wall., ~~576~~ 766.
St. Louis street foundry, *ibid.*, 770.

It cannot now be known what the issues will be when the pleadings are reformed.

Morris & Johnson *vs.* The United States, 7 Wall., 578, was a suit of a species not authorized by the statutes, and not a suit in which a cause of action was defectively set forth, or one in which the trial was irregular and not according to law.

E. R. HOAR,
Attorney General.
W. A. FIELD,
Ass't Attorney General